

Tentative Rulings

Law & Motion and Family Law Calendar for May 24, 2010

May 20, 2010, 4:00p.m.

Judge Janet Hilde
Department Two

To request a hearing on any matter on this calendar, you must call the Court at 530/283-6305 by 12:00 noon, May 21st, notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

Probate – 9:00a.m.

Case No. PR02-6085 – Cons. of Guy

Tentative Ruling: **Appearance required.**

Case No. PR09-00044 – Cons. of Sherod

Tentative Ruling: **No appearance required.** The court has received Far Northern Regional Center's "letter of approval". However, the letter does not comply with Probate Code section 1827.5. The court has contacted the regional center, who will schedule an assessment, and submit a written report to the court. The court continues this matter to June 21, 2010, at 9:00a.m. for receipt of the report.

Case No. PR09-00001– Guardianship of Martin

Tentative Ruling: **Appearance required.** The court has not received the confidential guardianship status report.

Case No. PR10-00010 – Estate of Young

Tentative Ruling: **Approved.** The court finds that notice has been given as required by law. The petitioner's petition to administer the estate is granted.

Case No. PR07-6404 – Guardianship of Browning

Tentative Ruling: **No appearance required.** The court has received the investigator's report, and the oppositions filed by the minor, the minor's mother, and the current guardians. Based on the report and oppositions, the court **denies** the petition for guardianship filed by Salvador Zapien. The current guardians, Scott and Brenda Cory shall remain the minor's guardians until a successor guardian is appointed.

Civil – 9:30a.m.

Case No. CV09-00065 – Adams vs. Dept. of Fish & Game

Tentative Ruling: **No appearance required.** The court has received a request for a special setting on the motion for class certification. The scheduling for this hearing will be set on June 14, 2010 at 2:00p.m. Counsel may appear via CourtCall, and a future date and time for the hearing will be scheduled at that time.

Case No. LC09-00290 – Ford Motor Credit vs. Hinson

Tentative Ruling: **Appearance required.**

Case No. CV09-00103 – Griffin vs. KG Walters Construction

Tentative Ruling: **No appearance required.** After reviewing defendants' reply, and at the request of both counsel, the court grants the request to continue the mandatory settlement conference and trial date. The settlement conference scheduled for June 17, readiness conference on June 29, and trial dates beginning July 13, 2010, are hereby vacated. The matter is continued for a case management conference on June 14, 2010, at 2:00p.m. Counsel may appear by CourtCall.

Case No. CV10-00140 – Jamison vs. Pasco

Tentative Ruling: **Appearance required.**

Case No. LC09-00297 – National Business Factors vs. Hoekman

Tentative Ruling: **Denied.** Defendant's claim of exemption is denied. California Code of Civil Procedure Section 706.051(c) provides that Claims of Exemption are not available if "the debt was incurred for the common necessities of life furnished to the judgment debtor or the family of the judgment debtor." The wage garnishment in effect is for medical services. Those services are common necessities of life. Charges for medical care are not subject to claims of exemption. *J.J. MacIntyre Co. v. Duren* (1981) 118 Cal.App.3d. Supp. 16. The court will, however, modify the wage garnishment order to \$50 per pay period.

Case No. CV09-00263 – Nord vs. Nord

Tentative Ruling: **No appearance required.** Due to the court's involvement in a two-week civil jury trial, and the court's inability to issue a tentative decision in this matter, the hearing on defendant's demurrer is continued to June 14, 2010, at 9:30a.m. A tentative decision will be issued by the court on June 10, 2010.

Case No. CV09-00243 – Owens vs. Kerns

Tentative Ruling: The demurrer of Cross-Defendant Suburban Manufacturing Company ("Suburban") to the Cross-Complaint of Cross-Complainants William Kerns and Almanor Lakefront Village, LLC ("Cross-Claimants") is **sustained, with leave to amend.** Cross-Claimants have 10 days to amend the Cross-Complaint. The court's legal analysis is as follows:

Standard of Review

A demurrer admits the truth of all material facts alleged in the pleading, but not the contentions, deductions or conclusions of law or fact. *Adelman v. Associated Int'l Ins. Co.* (2001), 90 Cal.App.4th 352, 359; *Cross v. Bonded Adjustment Bureau* (1996) 48 Cal.App.4th 266. When the allegations of a pleading establish that there is no legal theory upon which liability may be imposed, the Court should sustain the demurrer. *Carroll v. Puritan Leasing Co.* (1978) 77 Cal.App.3d 481, 485. If the circumstances show that the pleading deficiencies cannot be cured, the demurrer should be sustained without leave to amend. *Droz v. Pacific Nat'l Ins. Co.* (1982), 138 Cal.App.3d 181.

1. Declaratory Relief

In order to state a cause of action for declaratory relief, the Cross-Claimants must allege facts that show: 1) there exists an actual controversy; 2) relating to the legal rights and duties of the parties under a written instrument; and 3) requests that the rights and duties be adjudged by the court. *Strozier v. Williams* (1960)187 Cal.App.2d 528, 532. Although Cross-Claimants argue that there is a controversy relating to the legal rights and duties of the parties under agreements and purchase orders between Suburban and themselves, these agreements and purchase orders, and the specific controversies surrounding them, do not appear anywhere in the Cross-Complaint other than through conclusions of fact. Moreover, even though the Cross-Complaint incorporates portions of the complaint, the complaint does not include facts sufficient to establish a cause of action for declaratory relief. Thus, Cross-Defendants' demurrer to the claim for declaratory relief is sustained. It does not appear, however, that this pleading deficiency cannot be cured. Thus, Cross-Claimants are granted leave to amend the Cross-Complaint.

2. Comparative/Equitable Indemnity

Equitable indemnity is available among tortfeasors who are jointly and severally liable for the plaintiff's injury. *Stop Loss Ins. Brokers, Inc. v. Brown & Toland Medical Group* (2006) 143 Cal.App.4th 1036, 1040. There must be a basis for the tort liability against the proposed indemnitor, which may be supported by a theory of a duty owed to the underlying plaintiff, strict liability, vicarious liability or implied contractual indemnity. *Id.* Cross-Complainants acknowledge that they must allege the same harm for which he may be held liable is properly attributable – at least in part – to the alleged indemnitor. *Platt v. Coldwell Banker Residential Real Estate Services* (1990) 217 Cal.App.3d 1439, 1445. Cross-Complainants argue that their incorporation by reference of the entire underlying complaint containing strict liability allegations, among 23 causes of action, is sufficient to state a cause of action for equitable indemnity. The Court disagrees. Additionally, as plead, the Second and Third Causes of Action are redundant. Thus, the demurrer to the Second and Third Causes of Action is sustained. Cross-Complainants are granted leave to amend.

3. Breach of Contract

As stated in the demurrer, in order to state a claim for breach of a written contract, the “terms must be set out verbatim in the body of the complaint or a copy of the written instrument must be attached and incorporated by reference.” *Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 459. The Cross-Complaint's Fourth Cause of Action is entitled “Breach of Written Contract.” The Cross-Complaint, however, fails to either attach the contract or set out verbatim the terms of the contract. Incorporation by reference of the complaint does not save this defect. The demurrer to the Fourth Cause of Action is sustained. Cross-Complainants are granted leave to amend.

4. Express Indemnity

As framed, the Fifth Cause of Action reads more as a request for declaratory relief (without the required *prima facie* allegations), than a breach of an express indemnity agreement. The demurrer to the Fifth Cause of Action is sustained, since it fails to plead essential elements

for either a breach of written contract or declaratory relief. Cross-Claimants are granted leave to amend.

5. **Breach of Express and Implied Warranties**

Privity of contract between the Cross-Claimants and Suburban is a required element for claims for breach of warranty, either express or implied, unless some exception applies. *Fundin v. Chicago Pneumatic Tool Co.* (1984) 152 Cal.App.3d 951, 956; *Windham at Carmel Mountain Ranch Assn. v. Superior Court* (2003) 109 Cal.App.4th 1162, 1169. The Cross-Complaint provides only conclusory allegations of fact indicating written and/or oral agreements that might provide privity of contract required for these claims. Since the Court need not accept conclusions of fact as true, the demurrer to the Sixth Cause of Action is sustained. Cross-Claimants have leave to amend.

Case No. CV10-00141 – Phelps vs. Flanigan & Leavitt Insurance Agency

Tentative Ruling: **No appearance required.** The court has recused itself in this matter, and counsel are to contact Debbie Norrie, the Court Executive Officer, at 530/283-6232, for the date and time for the hearing on the motion.

Case No. CV07-27377 – Yandell vs. Griffith

Tentative Ruling: **No appearance required.** Due to the court's involvement in a two-week civil jury trial, and the court's inability to issue a tentative decision in this matter, the plaintiff's request for appointment of guardian ad litem and defendants' request for a contested hearing on this issue, is continued to June 14, 2010, at 9:30a.m. A tentative decision will be issued by the court on June 10, 2010.

Family Law – 10:30a.m.

Case No. FL10-00106 – Mar. of Alliman

Tentative Ruling: **Appearance required.** The court intends to decline jurisdiction at this time, noting that California is not the child's home state. In addition, the court has not received a proof of service on the respondent.

Case No. FL09-00139 – Mar. of Artaz

Tentative Ruling: **Appearance required.** The court has not received a proof of service on the respondent.

Case No. FL0-00166 – Cash vs. Cobb

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. FL10-00119 and FL10-00010– Mar. of Barker

Tentative Ruling: **Appearance required.** The court has not received respondent's order after hearing. This matter may be taken off calendar if a stipulated agreement is filed with the court prior to the court date.

Case No. FL05-26849 – Mar. of Hummel

Tentative Ruling: **Appearance required.**

Case No. FL10-00091 – Matter of Harris

Tentative Ruling: **Appearance required.** The court has not received the report and recommendation from probation.

Case No. FL09-00159 – Mar. of Keely

Tentative Ruling: **Appearance required.** If an agreement is filed prior to the hearing, this matter may be taken off calendar.

Case No. FL07-27888 – Mar. of Lamar

Tentative Ruling: **Appearance required.**

Case No. FL10-00013 Mar. of Mattingly

Tentative Ruling: **Appearance required.** This matter is set for a review of temporary spousal support. If an agreement is filed prior to the hearing, or if the parties agree to continuing the spousal support order, this matter may be taken off calendar.

Case No. FL07-27628 – Scoville vs. Delgado

Tentative Ruling: **Appearance required.** The court has not received a proof of service on the petitioner.

Case No. FL10-00077 – Smith vs. Sullens

Tentative Ruling: **Appearance required.** If an agreement is filed prior to the hearing, this matter may be taken off calendar.

Case No. FL10-00078 - Sullens vs. Smith

Tentative Ruling: **Appearance required.** If an agreement is filed prior to the hearing, this matter may be taken off calendar.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. LC09-00321 – American Express Bank vs. Terhune

Tentative Ruling: **No appearance required.** At plaintiff's request, this matter is continued to July 26, 2010, at 1:30p.m. for further case management conference.

Case No. LC09-00319 – Chase Bank USA vs. Castagnetti

Tentative Ruling: **No appearance required.** The court has received notice of settlement of entire case. A request for dismissal is ordered to be filed no later than November 29, 2013.

Case No. LC09-00312 – Chase Bank USA vs. Decoe

Tentative Ruling: **Appearance required.**

Case No. LC09-Q0086 – Withrow vs. Albarran

Tentative Ruling: **Appearance required.** This matter will be set for trial.

Case No. FL09-00187 – Mar. of Bartos

Tentative Ruling: **Appearance required.** The court is in receipt of respondent's counsel's request for reconsideration, and as a result, the court hereby vacates its previous order of monetary sanctions against counsel. If a settlement is filed prior to the court hearing, this matter may be taken off calendar.

Case No. CV09-00205 – California Dept. of Forestry vs. Howell

Tentative Ruling: **Appearance required.**

Case No. LC09-00098 – Citibank vs. Rodriguez

Tentative Ruling: **Appearance required.** This matter will be set for trial.

Case No. LC09-00260 – Discover Bank vs. McClure

Tentative Ruling: **Appearance required.** The court intends to issue an order to show cause why terminating sanctions should not be imposed for non-compliance from the previous order on May 10, 2010, and failure to file proof of service or request an order for publication.

Case No. CV09-00245 – Grange Insurance vs. Howell

Tentative Ruling: **Appearance required.**

Case No. CV09-00307 – L&L Grell LLC vs. Bailey Creek Investors

Tentative Ruling: **Appearance required.** OSC hearing for defendants' counsel's failure to appear on May 10, 2010. The parties should be prepared to discuss ADR options and set a trial date.

Case No. CV09-00168 – Money vs. RD&D Construction

Tentative Ruling: **Appearance required.** The court will confirm the name of the mediator and date for mediation.

Case No. FL08-28542 – Mar. of Uchida

Tentative Ruling: **Appearance required.** If a settlement is filed prior to the court hearing, this matter may be taken off calendar.